

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

TERRIE HOLSCHER,

Plaintiff,

vs.

KEN HESS and LORI HESS, in their
individual capacities as co-landlords
and owners of d/b/a/ Glacier Mountain
Rentals,

Defendants.

No. 2:19-cv-50-BMM-KLD

ORDER

ORDER

Plaintiff Terrie Holscher filed a complaint against Ken and Lori Hess (“Defendants”). Holscher asserts that this Court has subject matter jurisdiction based on diversity of citizenship and the presence of a federal question. See 28 U.S.C. §§ 1332, 1331. Defendants filed a motion to dismiss based on lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and failure to state a claim under Rule 12(b)(6). (Doc. 5).

United States Magistrate Judge Kathleen DeSoto entered Findings and Recommendations in this matter on November 26, 2019. (Doc. 21). The Magistrate Judge concluded that it lacked jurisdiction and recommended that Defendant’s

motion to dismiss be granted and the case dismissed with prejudice. (Doc. 21 at 14). Neither party filed objections. The Court adopted the Magistrate Judge's recommendations in full and ordered the case be dismissed with prejudice. (Doc. 27). The Clerk entered judgment accordingly. (Doc. 28). Holscher filed a notice of appeal on January 23, 2020. (Doc. 29).

The United States Court of Appeals for the Ninth Circuit issued a Memorandum opinion on February 24, 2021. (Case No. 20-35049, Doc. 10-1). The Ninth Circuit affirmed the Court's dismissal for lack of subject matter jurisdiction. *Id.* at 2. The Ninth Circuit noted, however, that "a dismissal for lack of subject matter jurisdiction should be without prejudice. . . . We instruct the district court to amend the judgment to reflect that the dismissal is without prejudice." *Id.* (citation omitted). The Court will do so.

IT IS HEREBY ORDERED that the case is **DISMISSED** without prejudice and that the Clerk enter an amended judgment accordingly.

Dated the 18th day of March, 2021.

A handwritten signature in blue ink that reads "Brian Morris". The signature is fluid and cursive, with the first and last names being clearly legible.

Brian Morris, Chief District Judge
United States District Court